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IN THE HIGH COURT OF JUDICATURE AT BILASPUR,

(CHHATTISGARH)

WRIT PETITION NO. 666 OF 2004.

PETITIONER : SMT. SANTOSHI SAHU, W/O SHRI GANGA ARAM SAHU, AGED ABOUT 30 YEARS, R/O BASDEI, TAHSIL SURAJPUR, DISTRICT SURGUJA, (C.G.), CHAIRMAN OF DISTRICT CENTRAL CO-OPERATIVE BANK MARYADIT, AMBIKAPUR, (C.G.)

P. No. 653/04
Presented by Shri S.D. Bhargava
dated 27.12.04

VERSUS

RESPONDENTS :

1. STATE OF CHHATTISGARH, THROUGH: THE SECRETARY, COOPERATION, MANTRALAYA, D.K.S. BHAWAN, RAIPUR, (C.G.).

2. THE REGISTRAR CUM COMMISSIONER, CO-OPERATIVE SOCIETIES, RAIPUR, (C.G.).

3. THE COLLECTOR, AMBIKAPUR, DISTRICT , SURGUJA, (C.G.)

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Clerk to A. G. Bilaspur

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA, 1950 FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI MANDAMUS ETC. AND FOR OTHER APPROPRIATE WRIT OR WRITS, ORDER OR ORDERS, DIRECTION OR DIRECTIONS.

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HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION NO. 624/2004
BAIJNATH CHANDRAKAR

VERSUS

STATE OF CHHATTISGARH AND ANOTHER

WRIT PETITION NO. 628/2004
DOMENDRA BHEDIYA

VERSUS

STATE OF CHHATTISGARH AND OTHERS

WRIT PETITION NO. 637/2004
VINOD TIWARI

VERSUS

STATE OF CHHATTISGARH AND OTHERS

WRIT PETITION NO. 666/2004
SMT. SANTOSHI SAHU

VERSUS

STATE OF CHHATTISGARH AND OTHERS

Petitioners by : S/Shri M.D. Sharma, P. Diwakar, Manindra Shrivastava, Sanjay K. Agrawal and C.D. Sharma.

Respondents by: S/Shri Ravish Agrawal, Adv. General, Pramod Verma, Addl. Advocate General and N.K. Agrawal, Dy. Advocate General.

O R D E R

These writ petitions bearing W.P. No. 624/2004 (Baijnath Chandrakar –v- State of Chhattisgarh and another),

W.P. No. 628/2004 (Domendra Bhediya –v- State of Chhattisgarh and others, W.P. No. 637/2004 (Vinod Tiwari –v- State of Chhattisgarh and others) and W.P. No. 666/2004 (Smt. Santoshi Sahu –v- State of Chhattisgarh and others) involve identical facts and questions of law therefore, they are being decided by a common order.

2. Challenge in all these writ petitions is to the order dated 17th Feb.2004 Annexure P-1 in all the petitions passed by the State of Chhattisgarh/ respondent no. 1. The petitioners were holding the office of the Chairman, District Co-operative Central Banks. They are registered under Cooperative Societies Act, 1960 (For short hereinafter referred to as the Act). The order impugned has been passed under Section 52(4) of the Act, by which the State Government has directed that the Collector is nominated as Chairman of the Bank and to perform such duties in the co-operative society.

3. It is stated in Annexure P-1, filed in W.P. No. 624/2004 that in the scrutiny of the Balance Sheets for the year 2002-2003 as on 31-3-2003 of District Co-operative Central Bank, Bilaspur, it has been found that total share capital of the Bank is Rs. 953.53 lacs and other assets are 5453.04 lacs. Total assets and capital are Rs. 6406.57 lacs. The loss of the

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Bank is of Rs. 4248.34 lacs. The State Government has invested in the share capital Rs. 90.72 lacs and as on 31-3-2003, the Bank has suffered loss of 66.31%.

4. It is stated in Annexure P-1, filed in W.P. No. 628/2004 that in the scrutiny of the Balance Sheets for the year 2002-2003 as on 31-3-2003 of District Co-operative Central Bank, Durg, it has been found that total share capital of the Bank is Rs. 923.98 lacs and other assets are 1723.40 lacs. Total assets and capital are Rs. 2647.38 lacs. The loss of the Bank is of Rs. 849.56 lacs. The State Government has invested in the share capital Rs. 67.70 lacs and as on 31-3-2003, the Bank has suffered loss of 32.09%.

5. It is stated in Annexure P-1, filed in W.P. No. 637/2004 that in the scrutiny of the Balance Sheets for the year 2002-2003 as on 31-3-2003 of District Co-operative Central Bank, Rajnandgaon, it has been found that total share capital of the Bank is Rs. 658.21 lacs and other assets are 1944.38 lacs. Total assets and capital are Rs. 2602.59 lacs. The loss of the Bank is of Rs. 1542.98 lacs. The State Government has invested in the share capital Rs. 101.00 lacs and as on 31-3-2003, the Bank has suffered loss of 59.29%.

6. It is stated in Annexure P-1, filed in W.P. No. 666/2004 that in the scrutiny of the Balance Sheets for the year 2002-

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2003 as on 31-3-2003 of District Co-operative Central Bank, Ambikapur, it has been found that total share capital of the Bank is Rs. 299.59 lacs and other assets are 2304.45 lacs. Total assets and capital are Rs. 2604.04 lacs. The loss of the Bank is of Rs. 2740.38 lacs. The State Government has invested in the share capital Rs. 80.19 lacs and as on 31-3-2003, the Bank has suffered loss of 105.23%.

7. It is contended in W.P. No. 624/2004 that the petitioner was elected as representative for the Board of Directors, Distt. Central Cooperative Bank, Bilaspur. There were 25 elected directors of District Co-operative Central Bank who elected the petitioner as Chairman. The Collector Bilaspur, Dy. Registrar, Cooperative Societies and Dy. Director Agriculture are also ex-officio members. It is contended that the petitioner requested the Registrar for holding new election but the Registrar did not comply his legal obligations under the Act. The Registrar wanted to dissolve the Board of Directors of the District Co-operative Central Bank, Bilaspur for the purpose of controlling the co-operative movement by the present ruling party by attempting to initiate the proceedings under Section 53(1) of the Co-operative Societies Act, 1960. It is further contended that however realising that it would be impermissible under the law, the State Government has not

restored to action under sub-section 4 of Section 52 of the aforesaid Act. It is contended that under Section 53 of the Act, it is required that such action can only be taken after giving reasonable opportunity of showing cause against such proposed action and such action can only be taken if information before 45 days has been sent to the Reserve Bank of India. It is further contended that since the Registrar refused to comply with the order of the State Government to remove office bearers of all the Co-operative Banks of the State being illegal and contrary to law, it was decided to initiate the proceedings under Section 53(A) of the Act but because of the legal hurdles, now the recourse has been taken to the provision under Section 52(4) of the Act, which is a colourable exercise of power. The petitioner in the this petition has submitted that he is entitled to function till 8th July 2005 or till the elections are validly conducted and his term, he has taken all steps for conduction of election. It is further stated that there has been no fault on the part of the Chairman and at no point of time, nothing has been pointed out against the Chairman or the Board of Directors. It is contended in para 5.15 of the petition that the Bank had to face a big hardship because of Section 37 (A) of the Act wherein the societies cannot recover the amount of the

principal loans to the borrowers more than double of the amount but the societies and the Bank had not been given the benefit of such facility and they are being burdened with such loss amounting to Rs. 240.70 lacs. It is submitted that because of the policy of the Government, the bank had to suffer and the State Government is bound to make the payment of this amount as compensation. It is submitted that loss if any is because of the policy of the Government and for that the Chairman cannot be held responsible.

8. Counsel for the petitioners contended that the petitioners are Chairman of the Bank and each of them have been elected by the Directors for a period of 5 years. They are holding the office of Chairman and they have a right to continue in the office for the remaining period or till the elections are held under the provisions of the Act as contemplated in Section 49(7A) of the Act. It is submitted that he has not been removed from the office by any legal order. It is further submitted that without removal of the petitioner from the office, any person cannot be nominated as Chairman. It is further contended that the nomination of Collector as Chairman of the Bank will have an affect of removal of petitioner from the office of Chairman. It is further submitted that the State Government has not passed any

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order of removal of the petitioner from the office of Chairman but has nominated the Collected as Chairman, effect of which is removal of petitioner from the office. It is further contended that there is specific procedure envisaged under Section 53-B of the Act for the removal of the chairman and the State cannot remove the petitioner in the garb of the order under Section 52(4) of the Act. It is submitted that the impugned order is a politically motivated order. It is further contended that there is no allegation against the committee or the Chairman of the Bank. It is submitted that there is no vacancy of the office of chairman and section 52(4) of the Act may be invoked only where there is a vacancy and in absence of vacancy of office of chairman, the Collector cannot be nominated as Chairman. It is further contended by the petitioners that Section 52 of the Act is not applicable. It is further contended that the respondent/State has not issued any show cause notice or provided any opportunity of hearing before passing such an order. It is further submitted that the principles of natural justice have not been followed and the order is vitiated on this ground. It is further contended that the State is claiming absolute power under Section 52(4) of the Act. It is contended that absolute power is not vested. It is a cooperative movement and the absolute power to remove

the elected representatives demolishes the cooperative movement itself.

9. Learned State counsel on the other hand submitted that the State Government, in exercise of powers under section 52(4) of the Act has nominated one of its nominee as Chairman of the Bank. It is further submitted that the said power has been exercised after due consideration of all the facts and circumstances and after satisfying itself about the requirement of section 52(4) of the Act. It is submitted that the aforesaid provision is meant for improvement of the financial condition of the Bank concerned. It is further submitted that section 52(4) of the Act has overriding effect and it has naturally resulted in discontinuance of the petitioner as Chairman of the Bank. Learned counsel vehemently contended that the impugned order does not cast any stigma and is simply a result of the exercise of power under Section 52(4) of the Act. It is submitted that the action of the Government in appointing its nominee as Chairman of the Bank is not at all actuated by malice but the object behind taking the action is to improve the financial condition of the Bank. State counsel further contended that vires of the provisions contained in section 52(4) of the Act have not been challenged by the petitioner. In the return while replying to

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the paras 5.17 to 5.19, it is submitted that in fact the loss occurred to the Bank is due to their mismanagement, fault and imperfection resulted not only loss to their own capital but also loss to other individual depositors as well and loss to constituent societies. It is further submitted that audit report Annexure R-6 would show that the Bank is continuously running in loss and which is increasing day by day and that cannot be attributed to the situation of drought in any manner.

10. It is contended by the State Counsel that the power has been exercised in public interest. It is also contended that Section 52(4) of the Act starts with non-obstante clause and it has overriding effect. It is also contended that power has been exercised in the larger public interest and as the conditions existed were sufficient for exercising power as enumerated under Section 52(4) of the Act.

11. The petitioners have filed rejoinder. It is contended that Section 52(4) of the Act does not authorize the State Government for passing any order of removal of the Chairman from the Bank and, therefore, such order is illegal and without jurisdiction. It is submitted that it is only Section 53(B) of the Act, which provides the power to remove an office

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of the Society. The officer has been defined under Section 2(T-i) of the Act, including the Chairman and that too power of removal is vested with the Society and if, the society does not proceed with the removal then only thereafter the Registrar may exercise such power. It is submitted that in the present case, no such provision has been complied with and therefore there is no removal at all. It is denied by the petitioners that the bank has incurred the losses to the extent of 25% or more than its own capital. The petitioner has referred to a meeting of all the District Co-operative Central Bank of Chhattisgarh, presided over by the Chief Secretary of the Chhattisgarh on 30-1-2003 in which it was dissolved that the District Co-operative Central Banks should be redressed by the different departments of the State government on different items.

12. The matter has been heard on many dates and Shri Ravish Agrawal, learned Advocate General, Shri Pramod Verma, Addl. Advocate General, Shri N.K. Agrawal, Dy. Advocate General have also addressed the Court on behalf of the respondent/State.

13. In view of the rival contentions of the counsel for the parties, Section 52 and 53-B of C.G. Cooperative Societies Act are relevant and quoted below:-

"52. Power to appoint Government nominees.- (1) Where the State Government –

(a) has subscribed to the share capital of a society; or

(b) has assisted indirectly in the formation or augmentation of the share capital of a society as provided in Section 45; or

(c) has guaranteed the repayment of principal and payment of interest on debentures issued by a society; or

(d) has guaranteed the repayment of principal and payment of interest on loans and advances to a society;

the State Government or any authority specified by the State Government in this behalf shall have the right to nominate such number of persons not exceeding (four) as it may deem fit on any or all of the committees of such society.

(2) A person nominated on the committee of a society under sub-section (1) shall hold office for such period and on such conditions, as may be prescribed.

(3) Notwithstanding anything contained in this Act, every person nominated on the committee of a society under sub-section (1) shall have one vote in such committee:

Provided that nominated person shall not be entitled to vote in any election of the office bearers of the committee of the society.

(4) When the Government has subscribed to the share capital of, or has guaranteed the repayment or principal and payment of interest on loans and advances to a society to the extent of rupees three lakhs or more and the society has incurred loss to the extent of twenty-five per cent or more of its owned capital, the State Government may, notwithstanding anything contained in this Act, the rules made thereunder or byelaws of the society, nominate one of the members nominated by it under sub-section (1) as Chairman of the Committee of the Society and further appoint one of the nominated

members as Managing Director/General Manager/Manager of the society."

"53-B. Power of the Registrar to remove an Officer of a society in certain circumstances.-(1) If in the opinion of the Registrar, any officer of the Co-operative society has been grossly negligent in the discharge of his duties imposed on him by or under this Act the rules made thereunder or byelaws or has, by a fraudulent act, caused financial loss to the society the Registrar may without prejudice to any other action that may or can be taken against him, call upon the society to remove within a specified period such officer from the office held by him and where necessary also to disqualify him from holding any office under that society for a period not exceeding three years, whereupon the society shall, affording opportunity to the officer concerned of being heard, pass such orders as it deems fit.

(2) On failure of the society to take action under sub-section (1), the Registrar may after affording opportunity to the officer of being heard and for reasons to be recorded, and communicated to the officer and the society concerned, remove or remove and disqualify for a period not exceeding three years, the officer from holding any office under that society for the period specified in the order.

(3) An officer removed under the sub-section (1) or sub-section (2) shall with effect from the date of communication of the order, cease to hold that office and if disqualified shall not be eligible to hold any office under that society for the period specified in the order.

14. The main question for consideration is whether the petitioner has been removed from the office of Chairman or he has been bypassed or kept in curtain for the time being till

the impugned order remains in force, and the entire function will be managed by the new chairman and whether such course is available, has to be considered. The similar question arose in the case of Deepak Saxena –v- State of M.P. and others (2004(II) MPJR 205). Paras 12 and 13 of the judgment are relevant and quoted below:-

> "12. Now the important question whether by the impugned order petitioner has been removed from the office of Chairman or he has been bypassed or kept in curtain for the time being, till the impugned order remains in force, may be seen. As the learned Advocate General during the courts of arguments explained that the petitioners shall remain as Chairman, but for the time being they will remain behind the curtain and the entire function of the Bank shall be managed by the nominated Chairman. Whether such course is available under sub-section (4) of the Act that, without removal of elected Chairman another Chairman may be nominated and the existing Chairman shall remain behind the curtain or vacancy of the office of Chairman is necessary for the nomination of Chairman under sub-section (4).
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> 13. To appreciate this question, it is necessary to look into the incorporation of sub-section (4) of Section 52 in the statute book. By 1976 amendment, section 52 was amended by inserting sub-section (4). Another amendment in the Act is incorporation of Section 53-B empowering the Registrar to remove an officer of the society in certain circumstances. Section 53-B provides a complete procedure in itself, empowering Registrar to remove an office bearer of the society which includes Chairman of the society. For the first time these two provisions were incorporated in the Act. Section 53-B as quoted hereinabove provides that, if in the opinion of the Registrar any officer of Co-operative society has been grossly negligent in the discharge of his duties imposed on him by or

under this Act; the rules made thereunder or byelaws or has, by a fraudulent act, caused financial loss to the society the Registrar may without prejudice to any other action that may or can be taken against him, call upon the society to remove within a specified period such officer from the office held by him and where necessary also to disqualify him from holding any office under that society for a period not exceeding three years. On receiving this direction the society shall after affording opportunity to the officer concerned of being heard, pass such orders as it deems fit. If the society does not take any action under sub-section (1), the Registrar may after affording opportunity to the officer of being heard and for reasons to be recorded, any communicated to the officer and the society concerned, remove or remove and disqualify the officer for a period not exceeding three years. This provision was incorporated for the first time on 15th March, 1976. Before this, the powers were exercisable under Section 53 of the Act. Section 53-B though provides for removal, but does not provide any power for filling-up of vacancy so occurred by removal. It appears that in peculiar circumstances, the power under sub-section (4) of Section 52 was envisaged in respect of special category of societies by nominating Chairman of the society. But the fact remains that until and unless any office is vacant, whether any other person may be nominated as Chairman? Though this question has been tried to be explained by learned Advocate General, but unsatisfactorily. How the State Government may nominate a Chairman for the society, whereas another elected person is already functioning and that too without his removal? Section 52 is silent in respect of removal of existing/elected Chairman. Then a harmonious consideration is to be given to the provision. Until and unless said office is vacant, the power under section 52(4) cannot be invoked. The State Government to take care the situation, when the office is vacant or new election cannot be held forthwith, may nominate any person, so nominated under sub-section (1) of section 52 as Chairman of the society, so that the society may continue to

function. But in no case, when a Chairman is functioning or holding the office, without his removal from the office, another person can be nominated. It cannot be said that the said person shall go behind the curtain and nominated Chairman shall work and discharge the function. All this cannot be done, until there is specific provision in this regard. Therefore, the argument of the learned Advocate General has no legs to stand. Even for the moment if it is assumed that the State Government has power to nominate a person under sub-section 4 of Section 52 and by invoking of aforesaid provision shall have effect of removal of elected Chairman, then in a democratic process the elected person who is holding the office by virtue of election under the statute requires one opportunity of hearing, or even of show cause before his removal. Elected person of any statutory body cannot be thrown in the like manner. He must get opportunity to explain the circumstances against him before his removal. He enjoys a elected office of reputation with responsibility. He holds the office after election from the members of the society, may be shareholders and/or borrowing members. But when the members of the society or general body of members, in whom the final authority in the society is vested, has shown its confidence in a member by electing him Chairman of the society, he cannot be removed from the office, without affording him proper opportunity. The principle of natural justice requires that a person who is removed from the office should know what is the cause or his act in this regard, resulting in his removal. He may show that he is not at all at fault and after his election the society has in fact not suffered any laws or has earned profit, then the authority competent for removal shall consider his reply and if the authority is satisfied with the reply of elected chairman, then the authority shall consider for his continuance in the office. Though the petitioner in some of the cases has tried to convince this Court that in past the Collector of District was officiating as Chairman and in his tenure the society had suffered loss, but at present there is no specific dates available in this regard and I am not inclined

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> to decide this issue at this juncture without full facts. But the fact remains that before passing the impugned order the State Government has not issued any show cause notice or afforded opportunity of hearing to the elected Chairman of society."

15. Counsel for the petitioners submitted that the removal of the petitioner is without jurisdiction as the removal is not provided under Section 52(4) of the Act and in support of the contention, counsel for the petitioners relied on para 14 the decision of the Hon'ble Apex Court in the State of Haryana –v-Haryana Co-operative Transport Ltd. and others (AIR 1977 SC 237).

16. Counsel for the petitioners heavily relied on the decision in Brij Gopal –v- State of Madhya Pradesh (1980 JLJ 536). In this case it was observed "the societies which can be registered under the Act are those which have their objects the promotion of the economic interest of their members or their general welfare in accordance with the Co-operative principles or similar objects." The basic principle of Co-operation is that the members join as human persons and not as capitalists. Co-operation is a form of organisation wherein persons associate together as human beings on the basis of equality for the promotion of the economic interest of themselves. Co-operation is a method of doing business with an ethical base. " Each for all, and all for each" is the motto of co-operation. Co-operation not only develops the latent

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business capacity of its members; it produces leaders; it encourages the growth of social virtues; honesty and loyalty become imperative; the prospect of a better life obtainable by concerted efforts is opened up, the individual realises that there is something more to be sought than mere material gain for himself. Co-operation being a business-cum-moral movement, the success of the enterprise depends upon the reality with which each one of the members works for the achievement of the object of the organisation."

17. Counsel for the petitioners further submitted that the petitioner requested from time to time for appointment of Returning Officer for the purpose of conducting new election of the committee in compliance of the provisions of sub-section 8 of Section 49 of the Act as per Annexure P-6 but nothing has been done by the Registrar and thereafter the impugned order has been passed nominating the Collector as Chairman. He relied on *1993 Revenue Nirnaya, 304 (Anulrudh Prasad Shastri and another -v- State of M.P. and others.* In para 11 of the judgment it has been held as under:-

> "11..... In a situation like this, the real question is whether the Registrar by not performing his obligations under the Act and not holding election before the expiry of the term of the existing committee, can be permitted to be benefited by his own default. If the matter is considered in the context of default of the Registrar or the Returning Officer appointed by him and the

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> decision is required to be taken in the context of democratic destiny and the rights of the members to manage the society, the provision would appear, prima facie, unreasonably and arbitrary. ....."

18. Counsel for petitioners relied on the decision of the Apex Court in State of Mysore –v- alum Karibasappa and others (AIR 1974 SC 1863). It was a case where the Mysore State Government in exercise of the power conferred by Sections 54 and 121 of the Act, issued notification dated 11-8-1972, in effect, superseding the entire committee of management of the Bellary District Co-operative Central Bank including the President and the Vice-President, and depriving the committee of their right to manage the affairs of the co-operative society without issuing a notice to it, the action of the Government was held ultra vires the Act and in violation of principles of natural justice and the notification must be set aside. The Hon'ble Apex Court held that the two notifications suffered from two in surmountable infirmities. One was that there was a provision under Section 30 of the Act to supersede the management. The State Government did not take recourse to the Section. Indirectly the State Government had overthrown the committee of management including the President and the Vice President. Section 54 contemplates exercise of control over the conduct of the

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business. The word "control" suggests check, restraint or influence. Control is intended to regulate and hold in check and restrain from action. In the guise of exercising control the State has displaced the committee of management and substituted its own Committee. The State has indirectly intended to achieve what it is directly prohibited from doing, under Section 54 of the Act. The second vice was that they were in violation of principles of natural justice. Section 30 of the Act contemplates a notice where the State intends to supersede the Management. The Committee has been deprived of their right to manage the affairs of the Society. They have been deprived of the right arbitrarily and in utter defiance of the powers under the statute. In paras 16, 17 and 18, it was held as under:-

> "16. In the present case, the impeached orders suffer from two in surmountable infirmities. One is that the entire committee of the management has been superseded. There is a provision under Section 30 of the Act to supersede the management. The State Government does not take recourse to the Section. Indirectly the State Government has overthrown the committee of management including the President and the Vice President. The President and the Vice President are officers within the meaning of Section 2 (g) of the Act. Section 54 does not confer any power to remove the President and the Vice President of the society. Section 54 contemplates exercise of control over the conduct of the business. The word 'control' suggests check, restraint or influence. Control is intended to regulate and hold in check a restrain from action. In the guise of exercising

> control the State has displaced the committee of management and substituted its own committee. The State has indirectly intended to achieve what it is directly prohibited from doing under Section 54 of the Act.
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> 17. The second vice of the notification is that it is in violation of principles of natural justice. Section 30 the Act contemplates a notice where the State intends to supersede the management. The committee has been deprived of their right to manage the affairs of the society. They have been deprived of the right arbitrarily and in utter defiance of the powers under the statute.
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> 18. The High Court rightly set aside the impeached notifications."

19. Counsel for the petitioners further contended that the removal of the petitioner is non-est in contravention of Section 53-B of the Act and opportunity of hearing is pre-requisite. He relied on the decision of the Apex Court in S.L. Kapoor –v- Jagmohan and Others AIR 1981 SCC 136. While considering the provisions of Section 238(1) of Punjab Municipalities Act, the Hon Apex Court held that opportunity should be given to Committee before an order of supersession is passed. It is observed in para 9 of the judgment that the status and office and the rights and responsibilities and the expectation of the Committee to serve its full term of office certainly creates sufficient interest in the Municipal Committee and their loss, if superseded, entails civil consequences so as to justify an insistence upon the

observance of the principles of natural justice before an order of supersession is passed.

20. Counsel for the petitioners further relied on the decision of the Apex Court in Dr. Rash Lal Yadav –v- State of Bihar and others (1994) 5 SCC 267. While considering the principles of natural justice, it was held in the case that in absence of contrary indication in statute, procedural fairness is an implied mandatory requirement to protect arbitrary action where statute confers wide power coupled with wide discretion on the authority. In para 6 of the judgement it has been held as under:-

> "The concept of natural justice is not a static one but is an ever expanding concept. In the initial stages it was thought that it had only two elements, namely, (i) no one shall be a judge in his own cause and (ii) no one shall be condemned unheard. With the passage of time a third element was introduced, namely, of procedural reasonableness because the main objective of the requirement of rule of natural justice is to promote justice and prevent its miscarriage. Therefore, when the legislature confers power in the State Government to be exercised in certain circumstances, or eventualities, it would be right to presume that the legislature intends that the said power be exercised in the manner envisaged by the statute. If the statute confers drastic powers it goes without saying that such powers must be exercised in a proper and fair manner. Drastic substantive laws can be suffered only if they are fairly and reasonably applied. In order to ensure fair and reasonable application of such laws courts have, over a period of time, devised rules of fair procedure to avoid arbitrary exercise of such

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powers true it is, the rules of natural justice operate as checks on the freedom of administration action and often prove time consuming but that is the price one has to pay to ensure fairness in administrative action. And this fairness can be ensured by adherence to the expanded notion of rule of natural justice. Therefore, where a statue confers wide power on an administrative authority coupled with wide discretion, the possibility of its arbitrary use can be controlled or checked by insisting on their being exercised in a manner which can be said to be procedurally fair. Rules of natural justice are, therefore, devised for ensuring fairness and promoting satisfactory decision making. Where the statute is silent and a contrary intention cannot be implied the requirement of the applicability of the rule of natural justice is read into it to ensure fairness and to protect the action from the charge of arbitrariness. Natural justice has thus secured a foothold to supplement enacted law by operative as an implied mandatory requirement thereby protecting it from the vice of arbitrariness. Courts presume this requirement in all its width as implied unless the enactment supplies indications to the contrary as in the present case. This Court in A.K. Kraipak v. Union of India after referring to the observations in State of Orissa v. Dr(Miss) Binapani Dei observed as under : (SCCp. 272, para 20)

"The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they don not supplant the law of the land but supplement it.

These observations make it clear that if the statute, expressly or by necessary implication omits the application of the rule of natural justice, the statute will not be invalidated for this omission on the ground of arbitrariness."

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21. Counsel for the petitioners further relied on the decision of Apex Court in State of Maharashtra –v- Jalgaon Municipal Council & others AIR 2003 SC 1659 in paras 30, 31 and 32 of which it has been held that :-

> " It is a fundamental principle of fair hearing incorporated in the doctrine of natural justice and as a rule of universal obligation that all administrative acts or decisions affecting rights of individuals must comply with the principles of natural justice and the person or persons sought to be affected adversely must be afforded not only an opportunity of hearing but a fair opportunity of hearing. The State must act fairly just the same as anyone else legitimately expected to do and where the State action fails to satisfy the test it is liable to be struck down by the Courts in exercise of their judicial review jurisdiction. However, warns Prof. H.W.R. Wade that the principle in flexible. "The judges, anxious as always to preserve some freedom of manoeuvre, emphasise that 'it is not possible to lay down rigid rules as to when the principles of natural justice are to apply; nor as to their scope and extent'. Their application, resting as it does upon statutory implication must always be in conformity iwht the scheme of the Act and with the subject-matter of the case. 'In the application of the concept of fair play there must be real flexibility'. There must also have been some real prejudice to the complainant: there is no such thing as a merely technical infringement of natural justice" (Administrative Laws, Wade and Forsyth Eigth Edition, 2000, pp 491-492).
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> The learned authors quote from two authorities in support of preserving flexibility. In Russell v. Duke of Norfolk (1949) 1 All ER 109, 118, Tucker LJ opined, "the requirement of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the Tribunal is acting, the subject-matter to be dealth with, and so forth". In Llovd v. McMahon (1987)SV 625, 702, Lord Bridge stated in his speech, "the so called rules of natural justice are not engraved on tabulates of stone. To use the

phrase which better expresses the underlying concept, what the requirement of fairness demand when any body, domestic administrative or judicial, has to make a decision which will affects the rights of individuals depends on the character of decision – making body, the kind of decision it has to make an statutory or other framework in which it operates. In particular, it is well-established that when a statute has conferred on any body the power to make decisions affecting individuals, the Courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguard as will ensure the attainment of fairness." (Administrative Law, ibid, at p. 493).

The caution of associating rules of natural justice with the flavour of flexibilities would not permit the Courts applying different standards of procedural justice in different cases depending on the whims or personal philosophy of the decision maker. The basis principles remain the same; they are to be moulded in their application to suit the peculiar situations of a given case, for the variety and complexity of situation defies narration. That is flexibility. Some of the relevant factors which enter the judicial process of thinking for determining the extent of moulding the nature and scope of fair hearing and may reach to the extent of right to hearing being excluded are: (i) the nature of the subject-matter, and (ii) exceptional situations. Such exceptionality may be spelled out by (i) need to take urgent action safeguarding public health or safety or public interest, (ii) the absence of legitimate exceptions, (iii) by refusal of remedies in discretion, (iv) doctrine of pleasure such as the power to dismiss an employee at pleasure, (v) express legislation. There is also a situation which Prof. Wade and Forsyth terms as "dubious doctrine" that right to a fair hearing may stand excluded where the Court forms an opinion that a hearing would make no difference. Utter caution is needed before bringing the last exception into play (Administrative Law, ibid, at pp. 543-544).

22. Counsel for the petitioners further relied on Mohinder Singh Gill and another -v- The Chief Election Commissioner, New Delhi and others (AIR 1978 SC 851) and Canara Bank and others –v- Debasis Das and others (2003 (4) SCC 557)

23. Counsel for the petitioners read the impugned order and submitted that the allegations are against the Bank and not against the Chairman. There is no whisper in the order that the chairman is responsible for accumulated loss. It is further submitted that power to the State is not to appoint ex-officio Chairman

24. Learned counsel appearing for the State relied on the decision in Aligarh Muslim University and others –v- Mansoor Ali Khan (2000) 7 SCC 529). In this case, the employee obtained two years' extraordinary leave to join a job in a foreign country and sought extension of leave by further two years but was granted extension for only one year with the warning that no further extension would be granted and that in case of overstaying, he would be deemed to have vacated the office. The employee despite this warning joined a fresh two years' job in the foreign country. On account of omission to join after the expiry of the third year of leave order deeming him to have vacated his office was passed. It was held that in such circumstances issuance of notice to him would not have

made any difference and, on admitted facts, only one view was possible. Hence, the absence of notice caused no prejudice to him and was, therefore, not vitiative of the termination order. It was further held that absence of notice when only one conclusion could be drawn, is not vitiative of the action taken without notice. It was further held that non-compliance with principles of natural justice unless causing prejudice, does not automatically entitle one to relief under Article 226 of the Constitution. The applicability of useless formality theory may depend on the facts of a particular case. Here in the case in hand, the petitioners are elected chairman of the Banks and useless formality theory does not apply in the present case.

25. Order Annexure P-1 has been issued when the Chairman was in the office. When the Chairman of the Society was already there, how the State Government can nominate another chairman, without removal of the elected Chairman. Section 52 is silent in respect of removal of existing/elected Chairman. Then a harmonious consideration is to be given to the provision. Until and unless said office is vacant, the power under section 52(4) cannot be invoked. The State Government to take care the situation, when the office is vacant or new election cannot be held forthwith, may

nominate any person, so nominated under sub-section (1) of section 52 as Chairman of the society, so that the society may continue to function. But in no case, when a Chairman is functioning or holding the office, without his removal from the office, another person can be nominated. It cannot be said that the said person shall go behind the curtain and nominated Chairman shall work and discharge the function. All this cannot be done, until there is specific provision in this regard. Order Annexure P-1 has been read, it nowhere says that the petitioner is removed. In fact, he has been directed to go behind the curtain.

26. If for the sake of argument, it is presumed that the State Government has power to nominate a person under sub-section 4 of Section 52 and by invoking of aforesaid provision shall have effect of removal of elected Chairman, then in a democratic process the elected person who is holding the office by virtue of election under the statute requires an opportunity of hearing or even of show cause before his removal. Elected person of any statutory body cannot be thrown in the like manner. He must get opportunity to explain the circumstances against him before his removal. He enjoys an elected office of reputation with responsibility. He holds the office after election from the member of the society.

The Committee has power to remove the Chairman by way of no confidence. These nominated members also at no point of time requested for removal. On what basis this opinion has been formed for removal, is not there. Even if at all, the opinion is there, then the nominated member should be appointed as Chairman. It is submitted that the Collector being nominated member, his affidavit should have been filed but the same has not been filed.

27. Counsel for the petitioners contended that in view of Para 28 of the return, contention of the counsel for the State that the action does not cast any stigma and it is a simple case nomination of Collector, is contradictory by averments made in this para, in which it has been said that the loss occurred to the bank is due to their mismanagement, fault and imperfection. It is submitted that without holding an inquiry the chairman ought not to have been removed. It is violative of principles of natural justice. Para 28 of the return is relevant and quoted below:-

> "28. With regard to contents of para 5.17 to 5.19 of the petition, it is submitted that in view of the audit report (Annex. R-6) the averments contained in these paragraphs are denied. In fact the loss occurred to the Bank is due to their mismanagement, fault and imperfection resulted not only loss to their own capital but also loss to other individual depositors as well and loss to constituent societies. It is denied that respondents made default in any manner. It is further

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submitted that audit report (Annex. R-6) would show that the Bank is continuously running in loss and which is increasing day by day and that cannot be attributed to the situation of drought in any manner. The answering respondents are annexing a copy of circular with regard to Non Performing Assets is annexed herewith as **Annexure R-7** for perusal. The Bank is legally bound to follow it and it cannot take shelter of it to throw its responsibility on the State."

The para 28 of the return goes to show that these factors were taken into consideration and for this, enquiry and report is necessary. In the opinion of this Court there is great force in the contention in view of para 13 of the judgment in Deepak Saxena (Supra), which has been already quoted in the foregoing paragraphs.

28. In view of the facts and circumstances of the case and discussions made hereinabove and since the matter is exactly covered by the decision in Deepak Saxena (Supra), and the judgments cited above, it is held that so far as impugned order passed by the State Government Annexure P-1 is concerned, it is not sustainable and it is quashed. The same is set-aside.

29. Consequently, these petitions are allowed with costs.

30. Counsel fee as per scale, if certified.

31. Before parting, this Court appreciates the valuable assistance rendered by the Counsel for parties.

32. Copy of this order be placed in all the connected cases.

Sd/-
Fakhruddin
Judge

27-10-2004